U.S. Department of Justice

Immigration and Naturalization Service

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Public Copy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Washington, D.C. Date: MAR 3 1 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

IN BEHALF OF APPLICANT:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Washington, D.C., and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who is seeking to adjust his status to that of a lawful permanent resident under section 13 of the Act of September 11, 1957, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(A)(ii).

The district director denied the application for adjustment of status after determining that the evidence of record failed to establish compelling reasons why the applicant was unable to return to the Philippines and why his adjustment would be in the national interest of the United States.

On appeal, counsel asserts that the Service erred in finding that there were no compelling reasons why the applicant is unable to return to the Philippines. He states that due to the applicant's career combatting subversive elements in the Philippines, he and his family were, and continue to be, subject to violence, threats and reprisals from members of these subversive groups. Counsel further asserts that the Service erred in finding that the applicant's adjustment to permanent residence would not be in the U.S. national interest. He states that the applicant's familiarity with and experience in the Philippine's intelligence services is of great potential value to U.S. intelligence services. Moreover, due to recent changes in the Philippine government, the applicant is in a position to serve U.S. Government interests such as the use by U.S. Armed Forces of facilities in the Philippines. Finally, counsel claims that the Service should be estopped from denying the applicant's adjustment application after delaying its decision for more than 12 years.

Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, provides in pertinent part:

> (a) Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.
>
> (b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien has shown compelling reasons demonstrating both that the alien is unable to return to

> the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

Pursuant to 8 C.F.R. 245.3, eligibility for adjustment of status under section 13 of the Act is limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government which accredited the applicant, and that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under section 13.

The statute requires that a section 13 applicant must have failed to maintain his or her status under the specified A or G nonimmigrant class. An A or G visa holder is lawfully admitted to the United States and is deemed to be maintaining lawful status so long as the Secretary of State recognizes him or her as being entitled to such status. Termination of recognition of an A or G visa holder's status is committed to the discretion of the Department of State. 22 C.F.R. 41.22(f).

The record shows that the applicant was first admitted to the United States on March 5, 1986 as an A-1 nonimmigrant official and employee of a foreign government. The applicant held the position of [redacted] at the [redacted] in [redacted] The record, however, does not reflect the date the applicant's status was terminated. The applicant filed his application for permanent residence under section 13 on June 23, 1986. Despite counsel's claim that the Service failed to make consultation with the Department of State concerning the applicant, the record reflects that on June 26, 1986, a consultation was made with the Department of State on Service Form I-88. On that form, the Department of State indicated that the applicant's name was

deleted by the Embassy from the current White List and no official termination notice was received.

In a self-affidavit furnished on appeal, the applicant states that he was a high-ranking officer in the [redacted] and was instrumental in curtailing many of the operations of both the [redacted] and the [redacted] in the [redacted] area. He claims that because he was formerly an interrogation and debriefing officer, he continues to be well known by many members of these subversive groups, and he fears they will seek to retaliate against him or members of his immediate family if they are forced to return to the Philippines. The applicant states that during the 1986 revolution which toppled the [redacted] government, he led government troops to regain control of the government broadcast station. While a[redacted] he received additional death threats from subversive elements sympathetic to the opposition. Fearing for his life, he fled the [redacted] and escaped to [redacted] on March 5, 1986. The applicant further states that to this day, groups such as the [redacted] the [redacted] and affiliated groups such as the [redacted] and [redacted] continue to openly pronounce their intent to kidnap and eliminate their enemies, especially those who supported the [redacted] government. He claims that if they were returned to the Philippines, he has no doubt that these organizations will target him and his immediate family members because of his leadership in curtailing their operations in [redacted]

Counsel, on appeal, submits copies of newspaper clippings and other news stories regarding terrorism, civil war threats, assassinations, kidnappings and attempted kidnappings, attacks and abductions by rebels. He states that as demonstrated in these reports, the [redacted] and offshoots of the forme[redacted] including the [redacted] and [redacted] continued their subversive, terrorist activities in the Philippines today, and that the [redacted] particular targets top Marcos associates, such as the applicant. Counsel asserts that although the [redacted] recently entered into a peace agreement with the Philippine government, classes between government and insurgent forces continue to inflict casualties on civilians.

Counsel also submits a March 23, 1986 newspaper clipping which mentions the four-day rebellion in which the applicant and a former classmate faced each other's troops over the seizure of Channel 4, and the negotiation for a cease fire. While this article did mention the applicant by name, it is not clear nor is there evidence that the applicant himself has been targeted or that he would be arrested upon his return to the Philippines. As counsel has pointed out [redacted] recently entered into a peace agreement with the Philippines government. Furthermore, although counsel claims that the applicant was involved in anti-terrorist operations, there

is no evidence that the applicant was personally barred from returning to the Philippines or that he would be persecuted if he were to return.

It is, therefore, concluded that the applicant has not demonstrated compelling reasons why he is unable to return to the country represented by the government which accredited him.

Referring to the doctrine of "nonrefoulement expressed in Article 33 of the Convention relating to the Status of Refugees; Sale v. Haitian Centers Counsel, 509 U.S. 155, 169 (1993); and INS v. Cardosa-Fonseca, 480 U.S. 421, 436-37 (1987), counsel asserts that the applicant's adjustment of status would be in the national interest. He argues that Article 33 is binding upon the United States and that the laws are intended to conform to the provisions of the Convention. Article 33, however, relates to refugees. There is no evidence in the record that the applicant is a refugee, or that he is even an asylee.

Counsel further asserts that the applicant is a value to U.S. intelligence agencies in that he possesses considerable background information on various contacts and information regarding the operations of and interrelationships among Philippine security agencies at all levels. The applicant, however, has not established that this information is not already available and known to the U.S., or that he is presently working with the U.S. Government in relations to his background information on various subversive groups whose activities, he claims, continue to threaten not only the interests of the current Philippine government, but those of the United States in its military, economic and political dealings with the current government of the Republic of the Philippines. Furthermore, it is noted that the applicant is in the real estate business in Hawaii. He has not shown that his activities in this position will be in the national interest.

Finally, counsel incorrectly argues that the Service should be estopped from denying the applicant's adjustment application after delaying its decision for more than 12 years. The United States Supreme Court has never upheld a claim that a Government agency may be estopped from deciding a case before it, such as this case, in accordance with the law. *See, Office of Personnel Management v. Richmond,* 496 U.S. 414 422 (1990). Even if estoppel were applicable to the Service under these circumstances, the petitioner has completely failed to establish the requisite elements therefor. There is no affirmative misconduct by the Service or detrimental reliance by the applicant on any prior representations by a Service official.

It is, therefore, concluded that the applicant failed to establish that his adjustment of status to that of an alien lawfully admitted to permanent residence would be in the national interest of the United States. Additionally, the applicant failed to establish compelling reasons why he is unable to return to the Philippines. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.